



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,690	03/11/2004	Lester Derbis	20556-74748	6198
23643	7590	06/05/2006	EXAMINER	
BARNES & THORNBURG 11 SOUTH MERIDIAN INDIANAPOLIS, IN 46204			JACKSON, ANDRE L	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/798,690	Applicant(s) DERBIS ET AL.	
	Examiner Andre' L. Jackson	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-19 is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7-13, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 6,269,521 to Gabel. Gabel discloses a hinge system useable with a closure (20) of a motor vehicle, the hinge system including a lower link bracket (18) to be secured to the closure, an upper link bracket (12) to be secured to the vehicle body, and pivoting links (72, 74) connected between the upper and lower brackets, wherein each pivoting link has a first end pivotally connected to the upper link bracket and a second end pivotally connected to the lower link bracket, the hinge system comprising;

a driving arm (76) having a proximal end and a distal end, the driving arm being pivotal about the proximal end (98), a driver (100) configured to drive the driving arm about its proximal end, a track (28) to be carried by the closure and the distal end (104) of the driving arm being coupled to the track, the distal end of the driving arm moves along the track as the driving arm is pivoted about its proximal end.

As to claims 2-5, 10-13 and 18, Gabel discloses that track defines a sliding channel at the upper link bracket as an extension of the upper link bracket, wherein a corresponding bearing (106) attached at the distal end of the driving arm is coupled to the sliding channel and movable there along at different positions.

As to claims 7, 8, 15 and 16, the hinge system of Gabel can be configured to be placed in a central region of the closure in a longitudinal direction of the motor vehicle (col. 2, lines 55-63).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gabel in view of USPN 6,789,834 to Schlegel. Gabel discloses that the driver in the preferred embodiment may be either a gas spring or helical spring or a similar element known within the art that biases or drives a closure member in an open/closed positions relative to a vehicle body. However, Gabel does not specifically disclose that the driver is an electromechanical driver defining an output shaft coupled to an end of the driving arm as claimed. Schlegel teaches a drivable hinge useable with a flap or lid of a motor vehicle, the hinge including a lower link bracket (3) to be secured to the vehicle body, an upper link bracket (2) to be secured to the flap or lid, and pivoting links (6, 7) connected between the upper and lower brackets. A driving arm link (18) is provided having a proximal end and a distal end, the driving arm being pivotal about the proximal end, an electro-mechanical driver (16) is configured to drive the driving arm about its proximal end, and a track (5) is coupled to the distal end of the driving arm such that the proximal end of the driving arm pivots. The electro-mechanical driver is an electrical motor having an output shaft in the form of gears and shaft (17) coupled to the proximal end of the

Art Unit: 3677

driving arm, the electro-mechanical driver is arranged as an extension of the driving arm link such that the mounting of the driver is without a need to create a special installation space and further since the driver as an extension of the driving arm link is in parallel orientation the electro-mechanical driver can advantageously follow the pivoting motion of the driving arm link during motion of a flap or lid without obstructing the pivoting motion of the flap or lid, thus eliminating extra mechanical parts and limiting installation space constraints. Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention was made to modify the hinge system of Gabel to include the drivable hinge device as taught by Schlegel to provide an enhanced automatic hinge system useable with a flap, lid or closure member to drive the closure member from opening and closing positions without obstructing the pivoting motion of the flap or lid, thus, eliminating extra mechanical parts and limiting installation space constraints.

Allowable Subject Matter

Claims 17-19 are deemed allowable over the prior art made of record as presently presented.

The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to disclose the specific arrangement and structural limitations as set forth in applicant's claims above. In particular, the prior art fails to disclose or suggest an opening/closing hinge device including a driving arm defining a proximal end and distal end, where the proximal end pivots via an output shaft that rotates or pivots about its rotational or pivot axis and is coupled on the proximal end of the driving arm. A driver is provided that drives the driving arm about the proximal end. A track is provided and securable to a moving structure

Art Unit: 3677

such as deck lid or hood or trunk member in the environment or relating to a vehicle. Further, the track is disposed in a generally parallel orientation to a longitudinal axis of a vehicle, wherein the distal end of the driving arm is coupled to track and the distal end of the driving arm moves along the track as the driving arm is pivoted or rotated about the proximal end of the driving arm. Here, the prior art fails to disclose the specific arrangement of the driving arm and the connection of the driving arm with the track and output shaft as set forth in applicant's claims and explained above. None of the prior art references, whether used in combination or taken singly, disclose the structural arrangement or combination of the structural relationship of applicant's structural elements/parts as claimed.

Response to Applicant's Arguments

Applicant's arguments filed in the Amendment of March 14, 2006 have been fully considered but they are not persuasive. In particular, applicant's arguments on page 1 of applicant's remarks assert that the prior art reference(s) relied upon (Gabel) fail to disclose or suggest every limitation as claimed. Specifically "a track to be carried by the movable deck" as recited in claim 1 or "a track to be secured to the lid or hood" as recited in claim 9. Here, Gabel discloses a track defined by a pair of parallel slots (28) in a bracket member (12) of the hinge system of Gabel. Although the bracket member is mounted to a base (14), it has been held that the recitation that an element is "capable of" (to be carried/to be secured) performing a function is not a positive limitation but only requires the prior art structure held analogous thereto having the ability to so perform applicant's intended usage. Applicant's recitation of "a track to be carried by the movable deck" or "a track to be secured to the lid or hood" does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Art Unit: 3677

However, even if applicant positively claims the arrangement of the track relative to one of the lower and upper brackets and further the track's connection to the lid or hood or movable deck, this limitation would still be unpatentable over Gabel because Gabel further discloses in column 4, lines 50-67 and column 5, lines 1-16 that the hinge system of Gabel may be modified for adjustability to operate in compact spaces, thus Gabel states that such a modification would also modify both the upper and lower brackets (12, 18), such that the pair of parallel slots 28 (track of applicant's invention) is disposed in each of the bracket to effectively carry out the rotational operation of the hinge system during use. Therefore, Gabel makes it apparent that either or both hinge brackets include track means that may be carried or secured to the movable deck or lid or hood as claimed. Thus, for the reasoning stated above Gabel does fully disclose and anticipate the limitations of claims 1 and 9 respectively and subsequent dependent claims thereof. Accordingly claims 1-16 remain rejected over Gabel and Gabel in view of Schlegel.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action.

Art Unit: 3677

In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre' L. Jackson whose telephone number is (571) 272-7067. The examiner can normally be reached on Mon. - Fri. (10 am - 6:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

André L. Jackson
Patent Examiner
AU 3677

ALJ


ROBERT J. SANDY
PRIMARY EXAMINER